

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AIR802, LLC, an Illinois Limited Liability
Company,

Plaintiff,

v.

AMAZON.COM, INC., a Washington
Corporation,

Defendant.

No. 2:11-CV-00341

ANSWER AND AFFIRMATIVE
DEFENSES AND COUNTERCLAIM

COMES NOW Defendant Amazon.com, Inc. (“Amazon”) and in Answer to Plaintiff
AIR802, LLC’s Complaint (the “Complaint”), responds as follows:

PARTIES

1. Amazon lacks sufficient information or knowledge to form a belief as to the truth
or falsity of the allegations contained in paragraph 1 of the Complaint, and therefore denies the
same.

2. Amazon admits that it has its principal place of business in Seattle, Washington,
but denies that it is a Washington corporation. Amazon denies the remaining allegations
contained in paragraph 2 of the Complaint.

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JURISDICTION AND VENUE

3. The allegations contained in paragraph 3 do not require a response. To the extent a response is required, Amazon denies the allegations contained in paragraph 3 of the Complaint.

4. Amazon admits the allegations contained in paragraph 4 of the Complaint.

5. Amazon admits that it has sufficient contacts with Washington to establish personal jurisdiction in the U.S. District Court for the Western District of Washington. Amazon denies that it committed any wrongful acts, and denies that any injury to Plaintiff occurred.

6. Amazon admits the allegations contained in paragraph 6 of the Complaint.

BACKGROUND

7. Amazon lacks sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 7 of the Complaint and therefore denies the same.

8. Amazon lacks sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 8 of the Complaint and therefore denies the same.

9. Amazon lacks sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 9 of the Complaint and therefore denies the same. The document attached at Exhibit A to the Complaint speaks for itself.

10. Amazon lacks sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 10 of the Complaint and therefore denies the same.

11. Amazon lacks sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 11 of the Complaint and therefore denies the same.

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12. Amazon lacks sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 12 of the Complaint and therefore denies the same.

13. Amazon lacks sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 13 of the Complaint and therefore denies the same.

14. Amazon lacks sufficient information or knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 14 of the Complaint and therefore denies the same.

15. On information and belief, AIR802 entered into an Amazon Services Business Solutions Agreement (the "Agreement") on or around January 2009, under which Plaintiff offered products for sale through the Amazon website. The terms of the Agreement speak for themselves. Amazon denies any attempt to recharacterize the terms of the Agreement.

16. Amazon admits that it received correspondence from Plaintiff in November 2010. Amazon denies the remaining allegations contained in paragraph 16 of the Complaint.

FIRST CAUSE OF ACTION – CLAIMS RELATING TO DEFENDANT’S PURPORTED SALES OF PLAINTIFF’S “ANTENNA, DIPOLE (RUBBER DUCK), 2.4 GHZ, 2 DBI, PR-TNC CONNECTOR”

17. Amazon repeats and incorporates prior responses.

18. Amazon denies that a product known as “Antenna, Dipole (Rubber Duck) 2.4 GHz, 2 dBi, RP-TNC Connector” is assigned an Amazon Standard Identification Number (ASIN) of B002R2FJWI. In fact, a product known as “Antenna, Dipole (Rubber Duck) 2.4 GHz, 2 dBi, RP-TNC Connector, AIR802 ANRD2402-RPTNC” is assigned an Amazon Standard Identification Number (ASIN) of B002R2FJWI. Amazon lacks sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 18 of the Complaint, and therefore denies the same.

19. Amazon denies the allegations contained in paragraph 19 of the Complaint.

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20. Amazon denies the allegations contained in paragraph 20 of the Complaint.

21. Amazon denies the allegations contained in paragraph 21 of the Complaint.

22. Amazon denies the allegations contained in paragraph 22 of the Complaint.

23. The allegations contained in paragraph 23 are legal conclusions to which no response is required. To the extent a response is required, Amazon denies the allegations contained in paragraph 23 of the Complaint.

24. The allegations contained in paragraph 24 are legal conclusions to which no response is required. To the extent a response is required, Amazon denies the allegations contained in paragraph 24 of the Complaint.

25. The allegations contained in paragraph 25 are legal conclusions to which no response is required. To the extent a response is required, Amazon denies the allegations contained in paragraph 25 of the Complaint.

26. The allegations contained in paragraph 26 are legal conclusions to which no response is required. To the extent a response is required, Amazon denies the allegations contained in paragraph 26 of the Complaint.

27. The allegations contained in paragraph 27 are legal conclusions to which no response is required. To the extent a response is required, Amazon denies the allegations contained in paragraph 27 of the Complaint.

28. The allegations contained in paragraph 28 are legal conclusions to which no response is required. To the extent a response is required, Amazon denies the allegations contained in paragraph 28 of the Complaint.

**SECOND CAUSE OF ACTION – CLAIMS RELATING TO DEFENDANT’S
PURPORTED SALES OF PLAINTIFF’S “DIPOLE RUBBER DUCK WIFI ANTENNA,
INDOOR HIGH GAIN 5DBI, SMA CONNECTOR”**

29. Amazon repeats and incorporates prior responses

30. Amazon denies that a product known as “Dipole Rubber Duck WiFi Antenna, Indoor High Gain 5dBi, SMA Connector” is assigned an Amazon Standard Identification

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1 Number (ASIN) of B002R2BJKO. In fact, a product known as “AIR802 ANRD2405-SMA
2 Dipole Rubber Duck WiFi Antenna, Indoor High Gain 5dBi, SMA Connector is assigned an
3 Amazon Standard Identification Number (ASIN) of B002R2BJKO. Amazon lacks sufficient
4 information or knowledge to form a belief as to the truth or falsity of the remaining allegations
5 contained in paragraph 30 of the Complaint, and therefore denies the same.

6 31. Amazon denies the allegations contained in paragraph 31 of the Complaint.

7 32. Amazon denies the allegations contained in paragraph 32 of the Complaint.

8 33. Amazon denies the allegations contained in paragraph 33 of the Complaint.

9 34. Amazon denies the allegations contained in paragraph 34 of the Complaint.

10 35. The allegations contained in paragraph 35 are legal conclusions to which no
11 response is required. To the extent a response is required, Amazon denies the allegations
12 contained in paragraph 35 of the Complaint.

13 36. The allegations contained in paragraph 36 are legal conclusions to which no
14 response is required. To the extent a response is required, Amazon denies the allegations
15 contained in paragraph 36 of the Complaint.

16 37. The allegations contained in paragraph 37 are legal conclusions to which no
17 response is required. To the extent a response is required, Amazon denies the allegations
18 contained in paragraph 37 of the Complaint.

19 38. The allegations contained in paragraph 38 are legal conclusions to which no
20 response is required. To the extent a response is required, Amazon denies the allegations
21 contained in paragraph 38 of the Complaint.

22 39. The allegations contained in paragraph 39 are legal conclusions to which no
23 response is required. To the extent a response is required, Amazon denies the allegations
24 contained in paragraph 39 of the Complaint.

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40. The allegations contained in paragraph 40 are legal conclusions to which no response is required. To the extent a response is required, Amazon denies the allegations contained in paragraph 40 of the Complaint.

THIRD CAUSE OF ACTION – CLAIMS RELATING TO DEFENDANT’S PURPORTED SALES OF PLAINTIFF’S “AIR802-CA400 ANTENNA CABLE ASSEMBLY (LMR 400 EQUIVALENT), NEW AIR802 TRI-METAL N PLUG (MALE TO N PLUG (MALE) CONNECTORS, 3 FEET, POLYETHYLENE (PE) JACKET”

41. Amazon repeats and incorporates prior responses.

42. Amazon admits that a product known as “AIR802-CA400 Antenna Cable Assembly (LMR 400 Equivalent), New AIR802 Tri-Metal N Plug (Male to N Plug (Male) Connectors, 3 Feet, Polyethylene (PE) Jacket” is assigned an Amazon Standard Identification Number (ASIN) of B0029P0GU8. Amazon lacks sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 42 of the Complaint, and therefore denies the same.

43. Amazon denies the allegations contained in paragraph 43 of the Complaint.

44. Amazon denies the allegations contained in paragraph 44 of the Complaint.

45. Amazon denies the allegations contained in paragraph 45 of the Complaint.

46. Amazon denies the allegations contained in paragraph 46 of the Complaint.

47. The allegations contained in paragraph 47 are legal conclusions to which no response is required. To the extent a response is required, Amazon denies the allegations contained in paragraph 47 of the Complaint.

48. The allegations contained in paragraph 48 are legal conclusions to which no response is required. To the extent a response is required, Amazon denies the allegations contained in paragraph 48 of the Complaint.

49. The allegations contained in paragraph 49 are legal conclusions to which no response is required. To the extent a response is required, Amazon denies the allegations contained in paragraph 49 of the Complaint.

1 50. The allegations contained in paragraph 50 are legal conclusions to which no
2 response is required. To the extent a response is required, Amazon denies the allegations
3 contained in paragraph 50 of the Complaint.

4 51. The allegations contained in paragraph 51 are legal conclusions to which no
5 response is required. To the extent a response is required, Amazon denies the allegations
6 contained in paragraph 51 of the Complaint.

7 52. The allegations contained in paragraph 52 are legal conclusions to which no
8 response is required. To the extent a response is required, Amazon denies the allegations
9 contained in paragraph 52 of the Complaint.

10 **FOURTH CAUSE OF ACTION – CLAIMS RELATING TO DEFENDANT’S**
11 **PURPORTED SALES OF PLAINTIFF’S “AIR802-CA400 ANTENNA CABLE**
12 **ASSEMBLY (LMR 400 EQUIVALENT), N PLUG (MALE) NEW AIR802 TRI-METAL**
13 **TYPE CONNECTORS, 4 FEET, PE JACKET, 50 OHM”**

14 53. Amazon repeats and incorporates prior responses.

15 54. Amazon admits that a product known as “AIR802 – CA400 Antenna Cable
16 Assembly (LMR 400 Equivalent), N Plug (Male) New AIR802 Tri-Metal Type Connectors, 4
17 Feet, PE Jacket, 50 Ohm” is assigned an Amazon Standard Identification Number (ASIN) of
18 B0029PWA0W. Amazon lacks sufficient information or knowledge to form a belief as to the
19 truth or falsity of the remaining allegations contained in paragraph 54 of the Complaint, and
20 therefore denies the same.

21 55. Amazon denies the allegations contained in paragraph 55 of the Complaint.

22 56. Amazon denies the allegations contained in paragraph 56 of the Complaint.

23 57. Amazon denies the allegations contained in paragraph 57 of the Complaint.

24 58. Amazon denies the allegations contained in paragraph 58 of the Complaint.

25 59. The allegations contained in paragraph 59 are legal conclusions to which no
26 response is required. To the extent a response is required, Amazon denies the allegations
contained in paragraph 59 of the Complaint.

60. The allegations contained in paragraph 60 are legal conclusions to which no response is required. To the extent a response is required, Amazon denies the allegations contained in paragraph 60 of the Complaint.

61. The allegations contained in paragraph 61 are legal conclusions to which no response is required. To the extent a response is required, Amazon denies the allegations contained in paragraph 61 of the Complaint.

62. The allegations contained in paragraph 62 are legal conclusions to which no response is required. To the extent a response is required, Amazon denies the allegations contained in paragraph 62 of the Complaint.

63. The allegations contained in paragraph 63 are legal conclusions to which no response is required. To the extent a response is required, Amazon denies the allegations contained in paragraph 63 of the Complaint.

64. The allegations contained in paragraph 64 are legal conclusions to which no response is required. To the extent a response is required, Amazon denies the allegations contained in paragraph 64 of the Complaint.

FIFTH CAUSE OF ACTION – CLAIMS RELATING TO DEFENDANT’S PURPORTED SALES OF PLAINTIFF’S “AIR802-CA400 ANTENNA CABLE ASSEMBLY (LMR 400 EQUIVALENT), N PLUG (MALE) TO N PLUG (MALE) TRI-METAL PLATED CONNECTORS, 5 FEET, POLYETHYLENE (PE) JACKET”

65. Amazon repeats and incorporates prior responses.

66. Amazon admits that a product known as “AIR802 – CA400 Antenna Cable Assembly (LMR 400 Equivalent), N Plug (Male) to N Plug (Male) Tri-Metal Plated Connectors, 5 Feet, Polyethylene (PE) Jacket” is assigned an Amazon Standard Identification Number (ASIN) of B0029PWFRK. Amazon lacks sufficient information or knowledge to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 66 of the Complaint, and therefore denies the same.

67. Amazon denies the allegations contained in paragraph 67 of the Complaint.

68. Amazon denies the allegations contained in paragraph 68 of the Complaint.

69. Amazon denies the allegations contained in paragraph 69 of the Complaint.

70. Amazon denies the allegations contained in paragraph 70 of the Complaint.

71. The allegations contained in paragraph 71 are legal conclusions to which no response is required. To the extent a response is required, Amazon denies the allegations contained in paragraph 71 of the Complaint.

72. The allegations contained in paragraph 72 are legal conclusions to which no response is required. To the extent a response is required, Amazon denies the allegations contained in paragraph 72 of the Complaint.

73. The allegations contained in paragraph 73 are legal conclusions to which no response is required. To the extent a response is required, Amazon denies the allegations contained in paragraph 73 of the Complaint.

74. The allegations contained in paragraph 74 are legal conclusions to which no response is required. To the extent a response is required, Amazon denies the allegations contained in paragraph 74 of the Complaint.

75. The allegations contained in paragraph 75 are legal conclusions to which no response is required. To the extent a response is required, Amazon denies the allegations contained in paragraph 75 of the Complaint.

76. The allegations contained in paragraph 76 are legal conclusions to which no response is required. To the extent a response is required, Amazon denies the allegations contained in paragraph 76 of the Complaint.

**SIXTH CAUSE OF ACTION – CLAIMS RELATING TO DEFENDANT’S PURPORTED
SALES OF PLAINTIFF’S “AIR802 CA600 50 OHM COAXIAL CABLE 500 FEET REEL
(LMR 600 EQUIVALENT)”**

77. Amazon repeats and incorporates prior responses.

78. Amazon admits that a product known as “AIR802 CA600 50 Ohm Coaxial Cable 500 Feet Reel (LMR 600 Equivalent)” is assigned an Amazon Standard Identification Number

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1 (ASIN) of B0036F2HDO. Amazon lacks sufficient information or knowledge to form a belief as
2 to the truth or falsity of the remaining allegations contained in paragraph 78 of the Complaint,
3 and therefore denies the same.

4 79. Amazon denies the allegations contained in paragraph 79 of the Complaint.

5 80. Amazon denies the allegations contained in paragraph 80 of the Complaint.

6 81. Amazon denies the allegations contained in paragraph 81 of the Complaint.

7 82. Amazon denies the allegations contained in paragraph 82 of the Complaint.

8 83. The allegations contained in paragraph 83 are legal conclusions to which no
9 response is required. To the extent a response is required, Amazon denies the allegations
10 contained in paragraph 83 of the Complaint.

11 84. The allegations contained in paragraph 84 are legal conclusions to which no
12 response is required. To the extent a response is required, Amazon denies the allegations
13 contained in paragraph 84 of the Complaint.

14 85. The allegations contained in paragraph 85 are legal conclusions to which no
15 response is required. To the extent a response is required, Amazon denies the allegations
16 contained in paragraph 85 of the Complaint.

17 86. The allegations contained in paragraph 86 are legal conclusions to which no
18 response is required. To the extent a response is required, Amazon denies the allegations
19 contained in paragraph 86 of the Complaint.

20 87. The allegations contained in paragraph 87 are legal conclusions to which no
21 response is required. To the extent a response is required, Amazon denies the allegations
22 contained in paragraph 87 of the Complaint.

23 88. The allegations contained in paragraph 88 are legal conclusions to which no
24 response is required. To the extent a response is required, Amazon denies the allegations
25 contained in paragraph 88 of the Complaint.

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AFFIRMATIVE DEFENSES

Having fully answered the Complaint, Amazon asserts the following affirmative defenses:

1. Plaintiff fails to state a claim upon which relief may be granted because, among other things, Amazon has not used the AIR802 mark in the course of selling or offering for sale allegedly competing products and, in any event, Amazon has not sold or offered for sale the allegedly infringing products. All of the allegedly infringing products are offered for sale by third parties through the Amazon website.

2. Under the Amazon Services Business Solutions Agreement that Plaintiff entered into with Amazon, Plaintiff agreed to a limitation of liability against Amazon that precludes the relief sought here.

3. Under the Amazon Services Business Solutions Agreement that Plaintiff entered into with Amazon, Plaintiff agreed to a general release of Amazon that precludes the relief sought here.

4. Plaintiff has failed to join a party whose joinder is required under Civil Rule 19.

5. Plaintiff's claims are barred by the equitable doctrines of waiver, failure to exhaust remedies, and/or collateral estoppel.

6. Plaintiff is not entitled to injunctive relief.

7. Plaintiff is not entitled to damages. Even if Plaintiff were entitled to damages, which it is not, Plaintiff is not entitled to treble damages because Amazon did not act in bad faith.

8. Plaintiff is not entitled to attorney's fees and costs incurred in this matter.

Amazon reserves the right to add defenses and affirmative defenses, third-party defendants, and to argue legal theories in addition to or in lieu of those specifically identified herein, as the facts in this matter may warrant, including without limitation additional or further facts hereafter disclosed through discovery.

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1 WHEREFORE, having fully answered the Complaint, ATS respectfully requests an
2 award against Plaintiff:

3 (A) Dismissal of the Complaint with prejudice;

4 (B) For an award of Amazon's attorneys' fees and costs and such other and further
5 relief as the Court deems just and equitable.

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7 DATED: May 13, 2011.

8 STOEL RIVES LLP

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10 /s/Vanessa Power
Vanessa Soriano Power, WSBA No. 30777

11 Attorneys for Defendant Amazon.com, Inc.
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CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

- **John Edward Grant , III**
john@imualaw.com,jegrantlaw@gmail.com
- **Eric Samuel Meltzer**
eric@imualaw.com

DATED: May 13, 2011.

STOEL RIVES LLP

s/ Vanessa Power
Vanessa Soriano Power, WSBA No. 30777

Attorneys for Defendant Amazon.com, Inc.